REPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA no.388/2005

% Date of Decision : May 31, 2007

D.D.A. Appellant

! Through : Mr. Gaurav Sarin for the appellant .

Versus

$ Saraswati Devi & ors. Respondents

^ Through: Mr. Hemant Malhotra & Mr.Rajiv Garg for respondents No. 1.
Mr.Saurabh for respondent No. 2.
Mr. Sanjay Katyal for respondent No. 3.
Mr. Vikas Dhawan & Mr. S.P. Das for the respondent/AIIMS.

CORAM:-
*** HON'BLE MR. JUSTICE T.S. THAKUR**
HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? Y
2. To be referred to the reporter or not? Y
3. Whether the judgment should be reported in the Digest? Y

Per S.N. AGGARWAL, J.

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1. The learned Single Judge vide impugned order has quashed the notification dated 7.3.1962 issued by the Delhi Administration under Sections 4, 6 17 of the Land Acquisition Act, 1894 for acquiring the land of Village Masjid Morh including the land of respondent no.1 measuring 5 bighas 19 biswas in Khasra No. 368. Aggrieved by the said order, the DDA has preferred this Letter Patent Appeal.

2. The property in question was acquired by the Government under Section 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 and was thereafter placed in the compensation pool under Section 14 of the Act. The said property was later on notified for sale in public auction on 21.5.1958. The late husband of respondent no.1 had participated in the auction. His bid was highest and was, therefore, accepted by the Government. The Ministry of Rehabilitation, Government of India vide letter dated 31.10.1960 asked the late husband of respondent no.1 to

take provisional possession of the property in question purchased by him in public auction. Part auction money was paid by the late husband of respondent no.1 by way of adjustment of his verified claim against property left by him in Pakistan. The late husband of respondent no.1 (auction purchaser) died on 6.6.1970. After his death the Ministry of Rehabilitation, Government of India vide its letter dated 16.6.1980 asked respondent no.1 to deposit the balance sale consideration of Rs.14,992/- within fifteen days. The balance sale consideration was deposited. Sale certificate was issued on 22.7.1980 and the same was registered on 15.7.1981.

3 Notification under Sections 4, 6 & 17 of the Land Acquisition Act for acquiring the land of village Masjid Moth including the land in question of respondent No. 1 was issued on 07.03.1962 which was followed by an Award No. 1351 dated 30.06.1982. As the possession of respondent No. 1 in respect of land in question was sought to be disturbed, she filed a suit for injunction being Suit No. 526/1992 in the

Subordinate Court and the Subordinate Court granted the ad-interim injunction as prayed for but the same was later on vacated. The respondent No. 1 aggrieved by the acquisition of her land in question vide Notification dated 07.03.1962, filed a writ petition in this Court (WP(C) No. 3789/93) and had prayed for quashing of the aforementioned Notification issued by the Delhi Administration and the LAC Case No. 72/85 pending in the Court of ADJ (Land Acquisition Court). The Notification dated 07.03.1962 was sought to be quashed inter alia on the ground that the land in question could not have been acquired by the Government as the said land being an evacuee property belonged to the Government in which title had not yet passed in favour of respondent No. 1 on the date of Notification. The prayer for quashing of Notification was opposed by the appellant (DDA) not only on the ground of delay and laches but also on the ground that the land in question ceased to be Government land w.e.f. 11.12.1960 and, therefore, the rights of respondent No. 1 in the said

land could be acquired under the Land Acquisition Act.

4 Learned Single Judge had framed following two issues for consideration in view of the pleadings of the parties before him:-

> "1 Whether the land in question was an evacuee land on the date of issue of notification under Section 4 of the Land Acquisition Act on 07.03.1962?.
>
> 2 Whether the land, if it was an evacuee property, could have been acquired under the law?."

5 Relying upon two judgments of this Court in *Shyam Sundar Khanna & Ors. Vs. UOI reported in 1997 RLR 101* and *Nanak Chand Sharma Vs. UOI & Ors. reported in 29 (1986) Delhi Law Times 246*, Learned Single Judge answered the first question in the affirmative holding that the land in question was an evacuee property on the date of the Notification under Section 4 and consequently answered the second question in the negative holding that the land in question could not have been acquired in law. Aggrieved by these findings of Learned Single Judge, the appellant (DDA)

has come up in this appeal.

6 There is delay of about 760 days in filing of this appeal. The appellant has filed an application (CM No. 2093/2005) for condonation of the said delay. This application is supported by the affidavit of Mr. S.P. Pandey, Director, LM (HQ), DDA. The appellant has contended in its application for condonation of delay that the delay of 760 days in filing of the appeal was neither willful nor due to negligence but was due to the time consuming and unavoidable administrative procedures which have to be gone through in cases like the present one, where the Government is the litigant and decisions have to be taken collectively. It is further contended that the appellant had to collate documents, administrative orders, judgments of the Supreme Court and various other records for preparation of the present appeal. The request made by the appellant for condonation of the delay is opposed by the counsel appearing on behalf of respondent No. 1 on the ground that the explanation given by the appellant for delay in filing of

the present appeal is unsatisfactory. We have given our anxious consideration to this aspect relating to condonation of delay. While considering the delay on the part of the appellant in filing of the present appeal, we have also taken into account the delay of more than 31 years on the part of respondent No. 1 in challenging the acquisition proceedings by way of writ petition in which the impugned order which is the subject matter of challenge in this appeal has been opposed. We are of the view that since the question in the present proceedings relates to valuable rights of the parties in the land in question, the delay on the part of either of the parties can not be allowed to come in the way of doing justice. We are further of the view that when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred. We feel that by delay, the appellant would not stand to gain anything and at best he would only be entitled to get his claim adjudicated on merits instead of it being thrown to winds on technical consideration of delay in filing of the

appeal. Having regard to the circumstances of the case, we are inclined to condone the delay in filing of the present appeal. The delay is accordingly condoned and the appeal is taken up for disposal on merits.

7 The property measuring 5 Bighas and 19 Biswas comprised in Khasra No. 368, Village Masjid Moth, New Delhi was acquired under Section 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954. The property was formed part of compensation pool under Section 14 of the said Act. The property in question was notified to be sold as Government property by way of a public auction on 21.06.1958. The late husband of respondent No. 1 participated in the auction and gave the highest bid which was accepted by the Ministry of Rehabilitation, Government of India, vide its letter dated 31.10.1960. The provisional possession of the property in question was delivered to the late husband of respondent No. 1. The husband of respondent No. 1 died on 06.06.1970. Part of the sale consideration of the property purchased by the late husband

of respondent No. 1 was adjusted against claim in respect of property left by respondent No. 1's husband in Pakistan. The balance sale consideration of Rs. 14,992/- was demanded by the Ministry of Rehabilitation, Government of India from respondent No. 1 vide letter dated 16.06.1980 and the said amount was required to be deposited within 15 days failing which sale would to be cancelled and earnest money to be forfeited. The balance sale consideration was deposited. Sale Certificate was issued on 22.08.1980 and the same was registered on 15.07.1981. The Government of NCT, Delhi (Erstwhile Delhi Administration) issued a Notification under Sections 4, 6, 17 of the Land Acquisition Act on 07.03.1962 for acquiring the land of village Masjid Moth including the land in question of respondent No. 1 for a public purpose. This Notification was followed by an award No. 1351 dated 30.06.1982. These are the facts over which there is no dispute between the parties.

8 The contention of respondent No. 1 before Learned Single Judge was that the land in question could not

have been acquired by the Government being an evacuee property. The contention was that the Government could not have acquired its own land. Further contention of respondent No. 1 was that the property in question continued to remain an evacuee property on the date of Notification dated 07.03.1962 as its title had not been transferred or passed on in favour of her late husband on the date of aforesaid Notification. These contentions found favour with Learned Single Judge and therefore vide impugned order Notification dated 07.03.1962 under Sections 4, 6 & 17 of the Land Acquisition Act was quashed.

9 Mr. Sarin learned counsel appearing on behalf of the appellant had argued that the judgment of this Court in the case of Shyam Sunder Khanna Vs. UOI relied upon by Learned Single Judge in favour of respondent No. 1 has been set aside by the Supreme Court in appeal filed by the appellant titled as “Delhi Development Authority Vs. Shyam Sunder Khanna & Ors” vide judgment dated 18.09.2003 in S.L.P. (Civil) No. 12460 of 1997 holding that this Court had

erred in quashing the acquisition notification ignoring the delay and laches on the part of the petitioner in approaching the Court. Learned counsel for the appellant had also relied upon another judgment of the Supreme Court in *Delhi Administration Vs. Madan Lal Nangia reported as (2003) 10 SCC 321* wherein it has been held as under:-

> *"Merely because a property is an evacuee property does not mean that it vests with the Central Government. The Custodian is a Statutory Authority appointed under the Acts. The custodian is a distinct person from the Central Government. Merely because a property vests in the Central Government. It must be noted that the Custodian is appointed for each State. Further, if, as contended, the property vests in the Central Government then there would be no question of Section 12 of the Displaced Persons (Compensation & Rehabilitation) Act providing that the Central Government could acquire such property. The Central Government can never acquire its own property. Thus the very fact that Section 12 of the Displaced Persons (Compensation & Rehabilitation) Act provides for acquisition by the Central Government clearly indicates that evacuee properties are not properties of the Central Government. As they are not properties of the Government they can be acquired, not just under Section 12 of the Displaced Persons*

(Compensation & Rehabilitation) Act, 1954, but even under the Land Acquisition Act."

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"Thus merely because the property vests in the Custodian as evacuee property does not mean that the same cannot be acquired for some other public purpose. The moment that property is acquired for another public purpose the compensation payable under the Land Acquisition Act would be paid to the Custodian who would then distribute it under the provisions of various Acts."

10 It may be seen from the above judgment in Madan Lal Nangia's case (Supra) that the Supreme Court has categorically held that even if there is a finding that the property acquired was an evacuee property on the date of Notification under Section 4 of the Land Acquisition Act, the acquisition in respect of the said land would still be valid.

11 The acquisition of land on similar facts, as are in the present case, was upheld by a Division Bench of this Court in case titled 'M.S. Dewan Vs. UOI & Ors., CWP No. 1400/1986 decided on 06.02.2003. In M.S. Dewan's case (Supra) a Division Bench of this Court had uphold the acquisition of evacuee property and dismissed the writ

petition of the auction purchaser. Even S.L.P. (Civil) No. 71152/2003 filed by the auction purchaser against the aforementioned decision of this Court was also dismissed by the Hon'ble Supreme Court. Hence the view taken by this Court in M.S. Dewan's case became final. Hence it would be relevant and necessary to refer to para 23 of the said judgment which is extracted here-in-below:-

> *"We have already held above that the title in the property passed in favour of the petitioner on 14.11.1961. Even assuming that the title had not passed to the petitioner till 22.07.1963, when sale certificate was issued, in that case also we do not find any substance in the submission made on behalf of the petitioner that the property could not have been notified for being acquired being the property of the Government till 22.07.1963 and the Government could not have acquired its own property. The reason in our holding so is that the property on being put to auction on 28.12.1960, the petitioner was declared to be the highest bidder against his verified claims of the property left behind in Pakistan. the verified claims were surrendered by him as a part of consideration for purchase of the property in question in public auction. The balance consideration was paid in cash. The entire consideration stood paid by 14.11.1961.* ***The***

right of the petitioner in the property on being declared to the highest bidder was a valuable right, which the petitioner could enforce against the respondents in compelling the respondents to transfer the property in his name. Such a right could be acquired. The property on being put to auction and on the petitioner being declared to be the highest bidder and on receipt of entire sale consideration went out of compensation pool. The petitioner alone had interest in the property. This interest could definitely be acquired pursuant to the notification issued under Section 4 of the Act. Therefore, it cannot be said that the notification under section 4 of the Act was non est. *It was for the petitioner to have raised a claim. Proceedings for acquisition thus cannot be challenged on the ground that such interest could not have been acquired. Therefore, no fault can be found in the notification under Section 4 of the Act."*

12 The question that needs our consideration in the present appeal is squarely covered by the above judgment of this Court in M.S. Dewan's case. The facts of the present case as well as that of M.S. Dewan's case are almost same. It has been categorically held in M.S. Dewan's case that the right held by the auction purchaser can be legally acquired by way of Notification under Section 4 of the Land Acquisition Act notwithstanding the transfer of title in

respect of land in question in his favour. We respectfully agree with the view already taken by this Court in the aforementioned case. Hence we have no hesitation in holding that Learned Single Judge erred in holding that the property in question was an evacuee property on the date of Notification dated 07.03.1962 and in quashing the said Notification for that reason. The view so taken by Learned Single Judge in the impugned order thus cannot be sustained in law particularly in view of the above referred judgment of the Supreme Court and of this Court.

13 For the foregoing reasons, the impugned order dated 09.08.2002 passed by Learned Single Judge in WP (C) No. 3789/93 is hereby set aside. This appeal is allowed with costs throughout.

S.N.AGGARWAL
(JUDGE)

May 31, 2007
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